

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5431 of 1994

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

-
1. Whether Reporters of Local Papers may be allowed to see the judgments?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgment?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DILIP K SHAH
VERSUS
UNITED BANK OF INDIA

Appearance:

MR IM PANDYA for Petitioner

MR SN SHELAT for Respondent No.1 and 2

CORAM : MR JUSTICE S.K. KESHOTE
Date of decision:03-03-97.

C.A.V. JUDGMENT

1. Heard learned counsel for the parties. This writ petition was ordered to be heard with Special Civil Application No.3769 of 1987. The Sp. C.A. No. 3769/87 has been heard and decided today. This matter has been heard alongwith the aforesaid Sp. C.A., but I am giving a separate decision.

2. The petitioner prayed in this Special Civil

Application for declaration that the action of the respondent-bank withholding the amount of Staff Provident Fund dues payable to the petitioner and the action of deducting an amount of Rs.12000/- from the amount of S.P.F. dues payable to the petitioner, to be illegal.

3. The petitioner was dismissed from the services after holding a full-fledged departmental inquiry under the order dated 28th December, 1986, which has also been confirmed by the appellate authority. In the inquiry it has been found by the Inquiry Officer that the petitioner has misappropriated an amount of Rs.10000/for his personal gains and purpose. This finding of the Inquiry Officer has not been challenged by the petitioner in Special Civil Application No.3769/87. Not only this, but the petitioner has also not challenged this finding of the Inquiry Officer before the appellate authority. From the document, the letter to the bank dated 22nd May, 1990 at page No.25 of this Special Civil Application, it is clear that total amount of Rs.42304-32 was there in the S.P.F. account of the petitioner. Out of which, there is not dispute, that Rs.12821-66 were to be paid by the petitioner towards the loan which he has taken from S.P.F.. Rs.12000/were deducted from the said amount of S.P.F.. This amount of Rs.12000/- was considered to be an amount of the bank which has been misappropriated by the petitioner. So the petitioner was entitled for Rs.17482-66, which amount the bank was ready and willing to pay, as it is apparent from the said letter. The grievance of the petitioner was that the amount of Rs.12000/- could not have been deducted as there is no question of any misappropriation made by him. On 26th July, 1994, this court has ordered to the Bank to pay to the petitioner Rs.19482-66. The amount of misappropriation is taken to be Rs.10000/- as per the finding of the Inquiry Officer. There is no dispute that the petitioner has been paid Rs.19482-66 after the order of this court dated 26th July, 1994.

4. In the presence of the finding of the Inquiry Officer of the misappropriation of Rs.10000/-, I do not find any illegality in the action of the Bank to deduct the aforesaid amount from the amount of the S.P.F. payable to the petitioner. After deducting this amount and the amount of the loan taken by the petitioner from the said fund, Rs.19482-66 was the amount payable to the petitioner. The petitioner was dismissed from the services on 28th December, 1986, and as such, immediately thereafter whatever amount payable to the

petitioner of his S.P.F. account should have been paid to him. The respondent-Bank has given out to the petitioner only on 22nd May, 1990, that he is entitled for Rs.17482-66 from the S.P.F. account and if he is agreeable for this amount then cheque may be released, but that amount was not sent to the petitioner for all these years. Only when the petitioner has filed this Special Civil Application, under the order of this Court that amount has been released to the petitioner. The total amount which was payable to the petitioner was Rs.19482-66, and there is no dispute that this amount is to be paid to the petitioner immediately on his dismissal from the services. The action of the respondent to withhold the payment of this amount to the petitioner, has certainly resulted in the loss to the petitioner in the form of interest to be earned by the petitioner on the said amount.

5. I fail to see any justification in the action of the respondent-Bank not to pay this amount to the petitioner for all these years. Whatever amount which was legally deductible from the amount of the S.P.F. of the petitioner, should have been deducted, and balance amount should have been paid to the petitioner, which precisely has not been done in the present case.

6. So this writ petition deserves to be accepted in part, and it is hereby ordered that the respondent-Bank shall pay to the petitioner an interest at the rate of 12% p.a. on the amount of Rs.19482-66 from 1st January, 1987, till the date when the said amount has been paid to him in pursuance of the order of this court dated 26th July, 1994. This Special Civil Application stands disposed of in the aforesaid terms. Rule stands disposed of accordingly with no order as to costs.

zgs/-